



SACHI A. HAMAI
Interim Chief Executive Officer

County of Los Angeles CHIEF EXECUTIVE OFFICE

Kenneth Hahn Hall of Administration
500 West Temple Street, Room 713, Los Angeles, California 90012
(213) 974-1101
<http://ceo.lacounty.gov>

April 28, 2015

To: Mayor Michael D. Antonovich
Supervisor Hilda L. Solis
Supervisor Mark Ridley-Thomas
Supervisor Sheila Kuehl
Supervisor Don Knabe

From: Sachi A. Hamai
Interim Chief Executive Officer

Board of Supervisors
HILDA L. SOLIS
First District

MARK RIDLEY-THOMAS
Second District

SHEILA KUEHL
Third District

DON KNABE
Fourth District

MICHAEL D. ANTONOVICH
Fifth District

RECOMMENDATIONS FOR PROPOSED LEGISLATIVE OR REGULATORY CHANGES TO GIVE THE COUNTY AND LOCALITIES SOME LEVEL OF FUNDED OVERSIGHT OF WATER PURVEYORS (ITEM NO. 27-B, BOARD MEETING OF FEBRUARY 24, 2015)

This memorandum provides a report on the Board action of February 24, 2015, which directed the Interim Chief Executive Officer, in consultation with the Interim Director of the Department of Public Health and County Counsel, to report back in writing in 60 days on recommended proposed legislative or regulatory changes that would give the County of Los Angeles and localities some level of funded oversight of water purveyors.

The Board's action resulted from complaints from residents of the City of Gardena regarding the quality of water provided by the Golden State Water Company (GSWC). The Board also directed this office to send a five-signature letter to the California Environmental Protection Agency's Water Resources Control Board (WRCB) asking that a letter be sent to GSWC. A copy of the five-signature letter is attached.

Background

In January 2015, the Department of Public Health (DPH) received complaints from a resident of the City of Gardena about the appearance and odor of water being piped into the home by the water purveyor, Golden State Water Company (GSWC), and the company's lack of responsiveness to the complaints. At the request of the California Environmental Protection Agency's Water Resources Control Board (WRCB) who

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received complaints as well, DPH conducted an investigation and learned that the blackened water was principally caused by sediment and bio-film in GSWC's water main lines. This sediment and bio-film was thought to be a result of years of water treatment and infrequent system flushing. DPH also learned that GSWC sought to address this issue by implementing remediation activities which included flushing and main line replacement. However, these actions appear to have been taken without adequately notifying or informing GSWC customers in advance.

According to the incident report filed by GSWC, the water system was compliant with bacteriological and water quality tests for E Coli and total coliform, but it failed to meet standards for odor and color. During the investigation, collaboration between DPH and the WRCB revealed that a review of the current regulatory enforcement codes and local ordinances was needed to determine if local health officers had sufficient code enforcement authority to appropriately protect public health and to manage public nuisance issues arising from violation of drinking water standards.

Review of Current State Law and Recommendations for Changes

The Department of Public Health indicates that under current State law, the WRCB and the County have a shared responsibility for ensuring the safety and quality of drinking water. The WRCB is responsible for ensuring the water quality from the water source to the property water meter for large water systems (i.e. those that serve more than 199 service connections). The County has delegated authority from the State to regulate water quality for small water systems with under 199 service connections. In both cases, the local health officer is responsible for ensuring that contaminants do not enter the water system after it leaves the water meter and enters a property.

The State's Safe Drinking Water Act (Act), as provided in California Health and Safety Code §116271 and §116670, authorizes local health officers to file a public nuisance lawsuit against water purveyors that violate primary drinking water standards, but not for violation of secondary drinking water standards. Currently, there is no statutory provision to allow the County to recover its legal fees and costs for bringing a public nuisance lawsuit. In addition, the Act governs public notification protocols, requirements for publishing annual reports, and testing and water sampling procedures, etc. Based on the review, this office, DPH and County Counsel have identified the following recommendations to address the oversight of local water purveyors:

- Notification to Residents – Water purveyors are required under Titles 17 and 22 of the California Code of Regulations to provide notification to customers when the water has failed to meet one of the following drinking standards: 1) primary standard (e.g. bacteriological and chemical contaminants, etc.), or 2) secondary

standard (e.g. discoloration, odor, etc.). Notice is required within 24 hours after violation of a primary drinking water standard and within 30 days after violation of a secondary drinking water standard.

The Department of Public Health recommends that State regulations be amended to require water purveyors to also notify customers prior to maintenance or repairs, such as flushing the system, which may cause conditions that violate primary or secondary drinking water standards, and that the pre-notification procedures are diversified (e.g. postcards, web-postings, robocalls, etc.) and robust (i.e., in the predominant languages of the customers) to adequately inform customers.

- Authority for Compliance – Water purveyors are required to comply with the directives of the WRCB. Currently, local agencies may only bring legal action against water purveyors for violations of primary drinking water standards.

The Department of Public Health recommends that State law be amended to require water purveyors to provide information upon request by local health officers to aid in the investigation of water quality complaints. DPH also recommends that State law be amended to authorize local agencies to bring legal action against water purveyors for violations of secondary drinking water standards.

- Complaint Process – Currently, water purveyors are not required to provide information to customers on how to file a complaint with the WRCB.

The Department of Public Health recommends that State regulations be amended to require water purveyors to provide information to customers on filing complaints with the WRCB, the Public Utilities Commission, and other State and local regulatory agencies. DPH further recommends that water purveyors be required to implement a tracking system to ensure timely follow-up and abatement of water quality issues.

- Incident Reports and Annual Compliance Reports – Water purveyors are required to publish annual reports on their compliance with the State's Safe Drinking Water Act.

The Department of Public Health recommends that State regulations be amended to require water purveyors to make available incident/after action reports within 30 days after a water quality incident, formatted in a manner easily understandable to the public.

Further, water purveyors should be required to include in their annual compliance report the year's incident reports and findings in response to customer complaints and/or WRCB and local regulatory agency investigations.

- Water Sampling and Testing – Water purveyors are required to test water samples as part of the regulatory monitoring plan.

The Department of Public Health recommends that State regulations be amended to add additional water sampling and testing requirements as determined by WRCB and/or local regulatory authorities in response to water quality incidents and investigations.

- Clarification of Inconsistencies – The Act is inconsistent regarding the authority of local health officers to enforce its provisions. For example, in one section the Act states that local health officers possess the authority for enforcement of the Act. However, in another section of the Act, it states that the local health officer must execute a Local Primacy Agreement (LPA) to have primary enforcement authority over some systems and shall not have enforcement authority over others.

County Counsel suggests clarifying these inconsistencies in statute.

- Retention of State Responsibilities – As previously stated, under current State law, the WRCB and the County have a shared responsibility for ensuring the safety of drinking water.

It is the joint recommendation of this office, DPH, and County Counsel that the WRCB retains its full administrative and enforcement authority, and the oversight powers as expressed in the Act, but that local health officers be jointly empowered to carry out the enforcement provisions in response to complaints, incidents, and/or investigations. Further, water purveyors should be liable for fees and costs incurred by the local health officer to gain compliance through enforcement of the Act.

Funding Options for Remediation

Similar to the authority granted to local health officers to file a public nuisance lawsuit against a water purveyor for violation of primary drinking water standards, cities may also file a public nuisance lawsuit against water purveyors through their local city attorney, for violation of the same standards. However, most cities that allow utility companies, such as water purveyors, to access public rights-of-way to install their

infrastructure require these companies to execute a right-of-way agreement (a.k.a. franchise agreement). Therefore, unlike the County, cities may potentially have a recourse for reimbursement of legal fees and costs.

For future violations of the Act, the County, in its role as the local health officer, could urge the city attorney for the impacted municipality to file its own public nuisance action pursuant to the Act. The benefit to this is that the city attorney is more likely to recover its legal fees and costs pursuant to its existing right-of-way agreement. Depending on the terms of the agreement, the city could also potentially assess liquidated damages against the water purveyor, thus further incentivizing the water purveyor to correct the violations. We are informed that the City of Gardena has a contractual relationship with the water purveyor. It is not clear whether this agreement is a right-of-way contract or a services agreement for the provision of water to city facilities. Either way, should the water quality issues persist, the County could urge the City of Gardena to consult its City Attorney to explore its contractual rights and remedies against GSWC.

Furthermore, if State law or existing regulations are amended to clarify that local health officers have legal authority to enforce the Act, the County could urge its 85 contract cities for which it serves as the local health officer to adopt and incorporate into their respective municipal codes Los Angeles County Code Title 1, Chapter 25. This would enable the County to assess administrative fines against violators of the Act up to \$1,000 per day on a per violation per day basis to recoup costs incurred by the County and act as an incentive to violators to come into compliance in a timely manner.

Conclusion

Because the above recommendations would either amend State law or existing regulations to strengthen a local jurisdiction's authority and oversight of public utility agencies, **your Board's approval is necessary to pursue any of the above recommended legislative or regulatory changes.**

Please feel free to contact me if you have questions, or your staff may contact Manuel Rivas, Jr. at (213) 974-1464.

SAH:JJ:MR
VE:TO:lm

Attachment

c: All Department Heads
Legislative Strategist
Local 721



COUNTY OF LOS ANGELES BOARD OF SUPERVISORS

KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET, ROOM 383
LOS ANGELES, CALIFORNIA 90012
(213) 974-1411 • FAX (213) 620-0636

PATRICK OGAWA
ACTING EXECUTIVE OFFICER

February 26, 2015

MEMBERS OF THE BOARD

HILDA L. SOLIS

MARK RIDLEY-THOMAS

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DON KNABE

MICHAEL D. ANTONOVICH

Ms. Felicia Marcus, Board Chair
California State Water Resources Control
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

Dear Ms. Marcus:

We are writing to respectfully urge you to immediately send a letter to the Golden State Water Company (GSWC) to take the prescribed actions listed below due to complaints of the appearance and odor of the water piped into the homes of residents of the City of Gardena, and GSWC's lack of communication with the community.

The City of Gardena receives water service from GSWC. Although the County of Los Angeles recognizes that it has no authority to regulate the quality of water from GSWC, and that the direct responsibility falls upon the California Environmental Protection Agency's State Water Resources Control Board, we have a shared responsibility to protect the health and safety of our mutual constituents.

At the request of the State Water Resources Board's Division of Drinking Water, the Los Angeles County Department of Public Health (DPH) conducted an investigation, and learned that the blackened water was principally caused by sediment and bio-film coming from the water mains as a result of years of water treatment and less frequent flushing. GSWC did not pre-notify customers of its remediation activities which included flushing and main line replacement. Multiple requests by DPH for flushing schedules were also denied.

Therefore, the County of Los Angeles Board of Supervisors requests the California Environmental Protection Agency's State Water Resources Control Board to immediately notify in writing the GSWC to take the following actions:

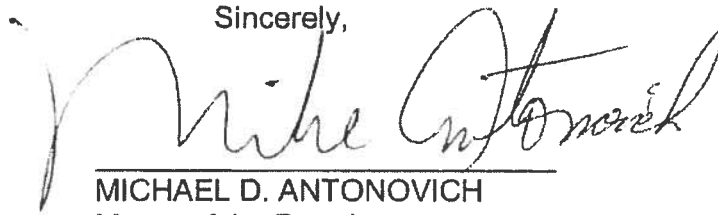
1. Revise notification procedures to promptly pre-notify customers of any flushing, piping or any other remediation activities that may affect water quality or cause any inconvenience to residents. Notification should be conducted through postcards, door advertisements, letters, robocalls and web postings;

Ms. Felicia Marcus
February 26, 2015
Page 2

2. Fully and promptly cooperate with directives and recommendations issued by State of California and County of Los Angeles authorities;
3. Provide information to customers on how they can file complaints to the State of California regulatory agencies for tracking and follow-up;
4. Issue a written report on any and all remediation actions taken to improve water quality in the City of Gardena and to post this written report in a manner that can be easily publicly viewed; and
5. Promptly and regularly request a laboratory analysis of water samples to ensure no contaminants are present and concentrations are appropriate, to take appropriate actions based on any laboratory findings and to make those findings easily publicly available.

Your leadership to expeditiously notify GSWC of these actions will help ensure that the State and the County have taken the necessary steps to help protect the health and safety of the residents of the City of Gardena and the surrounding communities.

Sincerely,



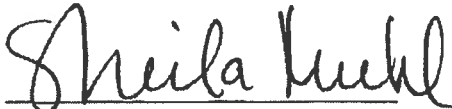
MICHAEL D. ANTONOVICH
Mayor of the Board



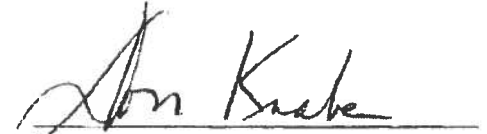
HILDA L. SOLIS
Supervisor, First District



MARK RIDLEY-THOMAS
Supervisor, Second District



SHEILA KUEHL
Supervisor, Third District



DON KNABE
Supervisor, Fourth District

c: Matthew Rodriguez, Secretary for Environmental Protection